

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 17 2007

OFFICE OF  
MANAGING DIRECTOR

Angela C. Parsons, Manager  
FiberTower Corporation  
1730 Rhode Island Ave., N.W.  
Suite 317  
Washington, D.C. 20036

Re: FiberTower Corporation and ART Licensing  
Corporation  
Request for Refund of Application Filing Fees  
Fee Control No. 0705248994419007

Dear Ms. Parsons:

This letter responds to your request filed June 18, 2007 (*Request*), on behalf of FiberTower Corporation (FiberTower) and its subsidiary, ART Licensing Corporation, a licensee of 38 GHz spectrum, for a refund of the \$45,990.00 fees associated with 42 license renewal applications. Our records reflect that you paid the filing fees. For the reasons set forth below, we grant your request.

You recite that "[o]n May 17, 2007, FiberTower filed 42 license renewal applications" along with a check for \$45,990.00 in payment of the application fees.<sup>1</sup> You state that "[d]ue to a clerical error, the check was accompanied by an outdated Remittance Form 159 associated with a different set of filings . . . [and that] the check was deposited by the FCC before the error was realized."<sup>2</sup> You state that after "[t]he ULS Help Desk informed FiberTower counsel that the incorrect Form 159 could not be replaced by the correct Form 159[,] . . . FiberTower withdrew its applications on May 31, 2007 and refiled the 42 applications on June 1, 2007 . . . [and that] FiberTower has since advanced payment through a new check with the correct Form 159."<sup>3</sup>

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<sup>1</sup> *Request* at 1.

<sup>2</sup> *Id.*

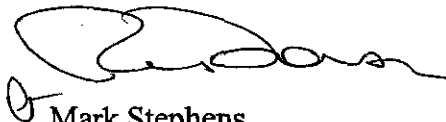
<sup>3</sup> *Id.*

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.<sup>4</sup> We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."<sup>5</sup>

In view of the circumstances recited above, including the fact that the initial license renewal applications were withdrawn only 14 days after they were filed and new license renewal applications were filed along with additional filing fees of \$45,990.00 and a corrected Form 159,<sup>6</sup> we find that the \$45,990.00 fees paid with the original renewal applications were effectively an "overpayment" under section 1.1113 of the Commission's rules, 47 C.F.R. §1.1113. We therefore conclude that a refund of the original application filing fees is appropriate.<sup>7</sup> We therefore grant your request for a refund of the \$45,990.00 filing fees associated with the May 17, 2007, license renewal applications.

A check, made payable to the maker of the original check, and drawn in the amount of \$45,990.00, will be sent to you at the earliest practicable time. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

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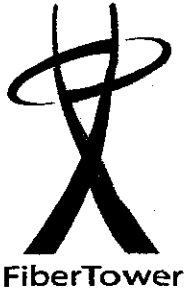
<sup>4</sup> See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

<sup>5</sup> See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

<sup>6</sup> The FCC received the filing fees on June 11, 2007.

<sup>7</sup> See 47 C.F.R. §§1.1108 and 1.1113(a).

AJ-  
Action  
R



RECEIVED FCC/FCC/TOG

JUN 18 2007

By: \_\_\_\_\_

Angela C. Parsons  
Spectrum Manager & Regulatory Staff Counsel  
1730 Rhode Island Avenue, NW

Suite 317  
Washington DC 20036  
Tel: 202.223.2003  
Fax: 202.467.4715  
aparsons@fibertower.com

6/2

June 11, 2007

0705248994419007

Regina Dorsey  
Deputy Chief Financial Officer  
Federal Communications Commission  
Office of the Managing Director  
445 12th Street SW  
Washington, DC 20554

**RE: Refund**

Dear Ms. Dorsey,

FiberTower Corporation ("FiberTower"), through its subsidiary ART Licensing Corporation, is a licensee of 38 GHz spectrum. On May 17, 2007, FiberTower filed 42 license renewal applications.<sup>1</sup> In payment, check #1287 for \$45,990.00 was delivered to the FCC office in Pittsburgh, PA. Due to a clerical error, the check was accompanied by an outdated Remittance Form 159 associated with a different set of filings.<sup>2</sup> Unfortunately, the check was deposited by the FCC before the error was realized.<sup>3</sup>

The ULS Help Desk informed FiberTower counsel that the incorrect Form 159 could not be replaced by the correct Form 159. Upon learning this, FiberTower withdrew its applications on May 31, 2007 and refiled the 42 applications on June 1, 2007.<sup>4</sup> FiberTower has since advanced payment through a new check with the correct Form 159.

<sup>1</sup> See ULS File Nos. 0003031402, 0003031426, 0003031403, 0003031430, 0003031404, 0003031405, 0003031435, 0003031437, 0003031406, 0003031433, 0003031407, 0003031427, 0003031441, 0003031408, 0003031409, 0003031410, 0003031411, 0003031438, 0003031431, 0003031412, 0003031413, 0003031414, 0003031428, 0003031442, 0003031415, 0003031416, 0003031417, 0003031434, 0003031439, 0003031418, 0003031419, 0003031420, 0003031429, 0003031436, 0003031432, 0003031421, 0003031443, 0003031422, 0003031423, 0003031440, 0003031424, and 0003031425.

<sup>2</sup> See Exhibit A, attached.

<sup>3</sup> See Exhibit B, attached.

<sup>4</sup> See ULS File Nos. 0003049160, 0003049119, 0003049120, 0003049121, 0003049122, 0003049123, 0003049124, 0003049125, 0003049126, 0003049127, 0003049128, 0003049129, 0003049130, 0003049131, 0003049132, 0003049133, 0003049134, 0003049135, 0003049136, 0003049137, 0003049138, 0003049139, 0003049140, 0003049141, 0003049142, 0003049143,

Accordingly, FiberTower hereby requests a refund of check #1287 in the amount of \$45,990.00. Payment should be made to FiberTower Corporation and sent to the following address:

Attn: Angela Parsons  
FiberTower Corporation  
1730 Rhode Island Avenue NW  
Suite 317  
Washington DC 20036

Thank you for your assistance.

Sincerely,



Angela Parsons

enclosures

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0003049144, 0003049145, 0003049146, 0003049147, 0003049148, 0003049149, 0003049150,  
0003049151, 0003049152, 0003049153, 0003049154, 0003049155, 0003049156, 0003049157,  
0003049158, and 0003049159.

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

Adams

SEP 17 2007

OFFICE OF  
MANAGING DIRECTOR

Brent Larson, President  
First National Broadcasting  
Corporation  
5777 South 3550 West  
Roy, Utah 84067-8131

Re: First National Broadcasting Corporation  
Request for Waiver of FY 2003  
Regulatory Fee Penalty  
Fee Control No. RROG-07-00008891

Dear Mr. Larson:

This responds to your inquiry requesting waiver of "additional fines and penalties" that may be due subsequent to your payment of the regulatory fees and penalties for late payment for fiscal years (FYs) 2004 and 2005 for First National Broadcasting Corporation (First National), Roy, Utah.<sup>1</sup> Our records reflect that the regulatory fees and penalties for late payment for FYs 2004 and 2005 in the amount of \$937.50 have been paid, as you state in your Inquiry,<sup>2</sup> but that such fee and penalty for FY 2003 have not. Therefore, we construe your request as pertaining to FY 2003. For the reasons set forth below, your request is denied.

You state that you believe that "additional fines and penalties" to the FYs 2004 and 2005 regulatory fees and late penalties enclosed with your Inquiry have already been paid.<sup>3</sup> You also state that you are unable to locate "the necessary 'verified proof'" of these previous payments.<sup>4</sup>

In the absence of any evidence that First National made timely payment of the FY 2003 regulatory fee, or any other support for a waiver, there is no basis for granting your request. In addition, the Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. § 159(c)(1). It is the obligation of the licensee responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later

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<sup>1</sup> Inquiry from Brent Larson (undated) (Inquiry).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*


Brent Larson, President

2.

than the final date on which regulatory fees are due for the year.<sup>5</sup> Your request does not indicate or substantiate that you met this obligation. Therefore, we deny your request.

Payment of \$456.25 for FY 2003 is now due. The payment should be submitted, together with a copy of Bill Number 04RE000692 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Stephens', written over a horizontal line.

Mark A. Stephens  
Chief Financial Officer

Enclosure

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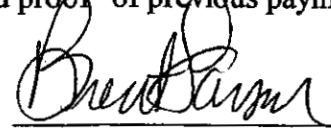
<sup>5</sup> See 47 C.F.R. § 1.1164; *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8107-08 ¶ 52 (2006).

RRG-07-00008891

Re: K252DI / Salt Lake City, UT

We acknowledge the attached fees of \$481.25 and \$456.25 (enclosed herewith check of \$937.50 to Pittsburgh office). But request waiver of additional fines and penalties as we believe these fees were paid. We have not as yet been able to locate the necessary "verified proof" of previous payments made.

Signed:



Brent Larson, President  
First National Broadcasting Corporation

Note two mailings of K252DI were made; one to Washington and a second to Pittsburgh to make payment.

Adama

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
AUG 31 2007

OFFICE OF  
MANAGING DIRECTOR

Garvey C. Wood  
Secretary/Treasurer  
Loma T.V. Club  
Post Office Box 207  
Loma, Montana 59460

Re: Loma T.V. Club  
Request for Waiver of FY 2003  
Regulatory Fee and Late Fee  
Fee Control No. RROG-07-00008582

Dear Mr. Wood:

This is in response to your letters dated May 23, 2007 and June 22, 2007 requesting waiver of the fiscal year (FY) 2003 regulatory fee and late penalty for translator station K11AD, which is controlled by the Loma T.V. Club (Club) of Loma, Montana.<sup>1</sup> Our records reflect that the FY 2003 regulatory fee and late penalty, which total \$456.25, have not been paid.

In your May 23, 2007 Letter, you state that your predecessor officers of the Loma T.V. Club obtained the translator licenses for two television stations, KFBB and KFTV, located in Great Falls, Montana.<sup>2</sup> You also state that the Club "is completely non profit," although it does not have any letter from the I.R.S. determining that the Loma T.V. Club is nonprofit and that the Club has never had sufficient funds to pay the legal fees to obtain such a letter.<sup>3</sup> You further state that all of the Club's funds come from donations, which are used to pay the power bill and minor repairs, and that its costs vary between \$150 and \$200 annually.<sup>4</sup> Finally, you state that the Club currently has about \$20 in funds, and that nearly all of your residents are either retired or of low income and could never afford to make sufficient donations to pay the \$456.25 due.<sup>5</sup> Your June 22, 2007 Letter essentially reiterates the assertions in your May 23, 2007 letter, and attaches a summary of the Loma T.V. Club's assets and checking account transactions for the period from January 2006-June 2007.<sup>6</sup>

In implementing the regulatory fee program, the Commission stated that it would waive its regulatory fees for any community-based translator station upon a showing that the station:

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<sup>1</sup> Letter from Garvey C. Wood, Loma T.V. Club, to Federal Communications Commission (May 23, 2007) (May 23, 2007 Letter); Letter from Garvey C. Wood, Loma T.V. Club, to Federal Communications Commission (June 22, 2007) (June 22, 2007 Letter).

<sup>2</sup> May 23, 2007 Letter.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*


<sup>6</sup> June 22, 2007 Letter.

(1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from the members of the community served for support.<sup>7</sup>

The licensee bears the burden of documenting its eligibility for the waiver; otherwise, the regulatory fee is due. *Id.* The information you submitted is incomplete in that it does not specifically state that criterion (1) is met. In addition, although your general assertions would show that you meet criteria (2)-(3), the financial information you attach does not correspond to the FY 2003 period that is at issue. Therefore, your request contains insufficient grounds to grant relief with respect to the FY 2003 fee for K11AD. Nevertheless, in light of your general assertions, if you wish, you may file a further request for relief with respect to the FY 2003 fees containing a statement that shows criterion (1) is satisfied and financial information to support criteria (2) and (3) for FY 2003, the period at issue. Your further request for relief must be filed within 30 days from the date of this letter.

If you have any questions concerning this matter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

  
Mark Stephens  
Chief Financial Officer

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<sup>7</sup> Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12761, para. 16 (1995).

MAY 29 2007

BY: \_\_\_\_\_

Loma T.V. Club  
P.O. Box 207  
Loma, Montana 59460

Federal Communications Commission  
Washington, D.C. 20554

23 May 2007

Dear People,

I am in receipt of your enclosed letter. I do dispute your determination and charges.

I have tried to call your phone numbers listed in your letter in the past and have been frustrated with the lack of a live person with whom to talk. Therefore I am writing this letter. I am the sole officer and I take what care is needed of the two translators and the small shack they are within. You may call me at 406.739.4224 if you wish to discuss this.

The Loma T.V. Club began over 50 years ago to provide a viewable television signal from two Great Falls, Montana television stations to the small community of Loma in north central Montana. Less than a hundred souls live here. Our village lies in a valley some 200 feet below the surrounding plains and we still do not get a good signal without the translators. Those stations in Great Falls are KFBB and KRTV. My predecessors originally built the translators from scratch. They obtained two translator licenses from the State of Montana, before there was such a thing from the FCC. When needed, those same people obtained two licenses; one for the KRTV translator, K07AM, and one for the KFBB translator, K11AD. The current translators were built by Tepco in South Dakota and purchased new more than 40 years ago.

The Loma T.V. Club is completely non profit. No, we do not have any determination letter from the IRS to prove this. This would cost us several hundred dollars in legal fees and we have never have had that kind of money as long as I have been an officer, since 1979. There is about \$20 dollars in the check book account at a local bank. All of our funds come from local donations. They are used to pay the power bill and minor repairs. Our assets are the two translators and the building where they are housed. Our costs vary between \$150 and \$200 per year. We do not have \$456.25 and I will not ask for donations to pay it. Almost all of our residents are either retired or of low income. They could never afford to make the size of donation needed to pay the above fee.

Please reconsider your determination and charges. If you carry forward with this action we will close the doors and you can have all \$20.

Sincerely,

  
Garvey C. Wood, Secretary/Treasurer  
Loma T.V. Club

encl.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 18 2007

*Adams*

OFFICE OF  
MANAGING DIRECTOR

Dan J. Alpert  
Counsel for Lone Star Network  
2120 N. 21<sup>st</sup> Road  
Suite 400  
Arlington, VA 22201

Re: Request of Waiver of Fiscal Year 2006 Regulatory Fee  
for Station KLSN (FM), Facility No. 77846  
Fee Control No. 0608249365888453

Dear Mr. Alpert:

This is in response to your request for waiver and refund of the Fiscal Year (FY) 2006 regulatory fee filed on behalf of Lone Star Network, licensee of Station KLSN (FM) (KLSN), Hudson, Texas.<sup>1</sup> You maintain that KLSN is currently dark.<sup>2</sup> As indicated below, your request is granted.

In support of your request, you have attached a letter dated August 29, 2006 from H. Taft Snowden, Supervisory Attorney, Audio Division, Media Bureau, granting KLSN Special Temporary Authority (STA) to remain silent for a period not to exceed 180 days from the date of that letter.<sup>3</sup>

In *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12,759, 12,762 (1995), the Commission determined that the imposition of a regulatory fee could be an impediment to the restoration of service by dark stations and that it therefore would waive the fee requirement for stations which have ceased operation.

Our records indicate that KLSN has been dark since August 9, 2006. Thus, your request to waive KLSN's FY 2006 regulatory fee is granted. Further, our records indicate that we received a timely payment of KLSN's FY 2006 regulatory fee on August 24, 2006. Accordingly, we will refund KLSN's FY 2006 regulatory fee payment. We will forward a check in the amount of \$1,150.00 at the earliest practicable time.

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<sup>1</sup> Waiver and Refund Request from Dan J. Alpert, Counsel for Lone Star Network, filed Sept. 19, 2006 (Request) at 1.

<sup>2</sup> *Id.*

<sup>3</sup> Attachment to Request, Letter from H. Taft Snowden, Audio Division, Media Bureau, FCC to Dan J. Alpert (Aug. 29, 2006) granting STA, (Attachment) at 1.

As a reminder, KLSN's license will automatically expire if broadcast operations do not commence by 12:01 a.m. on August 10, 2007.<sup>4</sup> See Section 312(g) of the Communications Act, 47 U.S.C. § 312(g). Therefore, this regulatory fee waiver applies only to FY 2006.

If you have any questions concerning this matter please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

  
Mark Stephens  
Chief Financial Officer

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<sup>4</sup> Attachment at 2.

ENTERED SEP 21 2006  
WTS No. 7836

The Law Office of

**Dan J. Alpert**

2120 N. 21st Rd.  
Arlington, VA 22201  
DJA@COMMLAW.TV

(703) 243-8690

(703) 243-8692 (FAX)

September 7, 2006

Mr. Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W..  
Washington, DC 20554

**RECEIVED - FCC**

**SEP 19 2006**

Federal Communication Commission  
Bureau / Office

**Re: Station KLSN  
Hudson, TX  
Facility No. 77846**

Dear Mr. Fishel:

Lone Star Network, by its attorney, hereby requests a waiver and refund of its 2006 Annual Regulatory Fee. In support thereof, the following is stated.

In the Memorandum Opinion and Order issued with respect to Implementation of Section 9 of the Communications Act, FCC 95-257 (June 22, 1995), the FCC recognized that waivers of the annual Regulatory Fee was appropriate in certain instances, and specifically determined that it would grant waivers to licensees of broadcast stations which are dark (not operating). The Commission recognized that an imposition of regulatory fees could be an impediment to the restoration of broadcast service, and that such it would be unnecessary for such stations to make any further showing to warrant grant of a waiver. Id. at ¶ 15.

Lone Star Network is licensee of Station KLSN, Hudson, Texas. The station currently is dark. See Attachment. Accordingly, a waiver of the 2006 Annual Regulatory Fee is appropriate. A refund of the \$1,150 fee that was timely paid respectfully is requested.

**WHEREFORE**, it respectfully is requested that this request be granted.

Very truly yours,

Dan J. Alpert

Counsel for Lone Star Network

**FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554**

**IN REPLY REFER TO:  
1800B3-ALM**

August 29, 2006

Dan J. Alpert, Esquire  
2120 North 21<sup>st</sup> Road  
Arlington, Virginia 22201

**In re: KLSN(FM), Hudson, Texas  
Facility ID No. 77846  
Silent Since August 9, 2006  
Request For Special Temporary  
Authority To Remain Silent**

Dear Mr. Alpert:

This letter concerns the request, filed on August 18, 2006, and supplemented on August 28, 2006, on behalf of Harold J. Haley, Sr. D/B/A Lone Star Network ("Lone Star"), for Special Temporary Authority ("STA") to permit FM Station KLSN(FM) to remain silent.

Lone Star's request states that KLSN(FM) went silent on August 9, 2006, because the station's transmitter failed. Lone Star also indicates that the part needed to repair the transmitter is manufactured in Italy and that it expects to return the station to operation by January 1, 2007. Lone Star's request includes the appropriate certification regarding Section 5301 of the Anti-Drug Abuse Act of 1988.<sup>1</sup>

Lone Star's request will be granted. Accordingly, Special Temporary Authority is granted to permit FM Station KLSN to remain silent not to 180 days from the date of this letter. Notwithstanding the grant of this Special Temporary Authority, the broadcast license for KLSN(FM) will automatically expire as a matter of law if broadcast operations do not commence by 12:01 a.m. on August 10, 2007.<sup>2</sup> See Section 312(g) of the Communications Act, 47 U.S.C. Section 312(g).

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<sup>1</sup> In the event extension of special temporary authority is sought, please renew the certification in this matter.

<sup>2</sup> Notification of resumption of broadcast operations must either be electronically filed or mailed to:

Federal Communications Commission  
Attn: 1800B3-ALM, Room 2-B450  
445 12th Street, S.W.  
Washington, D.C. 20554

The station's silent status does not suspend the licensee's obligation to comply with all other relevant Commission rules, including the filing, when appropriate, of applications for renewal of broadcast license. Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower shall be maintained. See 47 C.F.R. Sections 17.6 and 73.1740(a)(4).

Sincerely,

A handwritten signature in black ink, appearing to read "N. J. H. Snowdon", written over the word "Sincerely,".

H. Taft Snowdon  
Supervisory Attorney  
Audio Division  
Media Bureau

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 31 2007

OFFICE OF  
MANAGING DIRECTOR

John Wells King  
Garvey Schubert Barer  
Fifth Floor  
Flour Mill Building  
1000 Potomac Street, N.W.  
Washington, D.C. 20007-3501

Re: Nebraska Rural Radio Association  
Stations KNEB-AM, KNEB-FM,  
KTIC-AM, and KWPN-FM  
Fiscal Year 2006 Regulatory Fees  
Fee Control No. RROG-06-00007799

Dear Mr. King:

This is in response to your letter dated September 13, 2006<sup>1</sup> on behalf of Nebraska Rural Radio Association (NRRA) requesting waiver of annual regulatory fees for stations KNEB-AM and KNEB-FM, Scottsbluff, Nebraska; and KTIC-AM and KWPN-FM, West Point, Nebraska (Stations). Our records indicate that NRRA has not paid any regulatory fees for these stations for Fiscal Year (FY) 2006,<sup>2</sup> which total \$4,225. For the reasons stated herein, we grant your request.

You assert that the Stations should be exempt from annual regulatory fees because they are licensed to NRRA, a nonprofit association.<sup>3</sup> You state that NRRA acquired the Stations from subsidiary entities in a corporate reorganization in 2005.<sup>4</sup> As a result of this reorganization, you assert that the Stations are operated on the same basis as two other stations owned by NRRA, KRVN and KRVN-FM, which you say the Commission

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<sup>1</sup> Letter from John Wells King, Garvey Schubert Barer to Anthony Dale, Managing Director, FCC (Sept. 13, 2006) (Letter).

<sup>2</sup> Your Letter does not specify the FY for which you are seeking waiver for these stations, but states that NRRA acquired the licenses "in a corporate reorganization in 2005." Based on this information and the date of your Letter, we consider your request to be for FY 2006.

<sup>3</sup> Letter at 1. Subsequent to your Letter, you provided supplementary documentation to show NRRA's nonprofit status pursuant to Nebraska state law. Letter from John Wells King, Garvey Schubert Barer to Anthony Dale, Managing Director, FCC (Dec. 29, 2006); Letter from John Wells King, Garvey Schubert Barer to Marlene H. Dortch, Secretary, FCC (June 15, 2007).

<sup>4</sup> *Id.* at 2. The Commission previously denied your fee waiver request for stations KTIC and KWPN-FM because those stations were owned by a for-profit subsidiary of NRRA, not NRRA itself. See Letter from Mark A. Reger, Chief Financial Officer, FCC to John Wells King, Garvey Schubert Barer (Jan. 19, 2006).

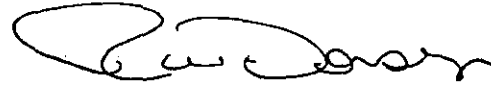
previously has exempted from annual regulatory fees on account of NRRA's nonprofit status.<sup>5</sup>


The Commission's rules provide that no regulatory fee shall be required for a nonprofit entity.<sup>6</sup> The rules define a nonprofit entity as "an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. §501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority."<sup>7</sup> The rules further provide that

[a]ny permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity . . . shall file with the . . . Commission . . . written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director.<sup>8</sup>

Based on the documentation you submitted, your request is approved for FY 2006. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark Stephens  
Chief Financial Officer

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<sup>5</sup> *Id.*

<sup>6</sup> See 47 C.F.R. §1.1162(c).

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. §1.1162 (c)(1); see also *id.* ("Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority.").



GARVEY SCHUBERT BARER  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WASHINGTON, D.C. OFFICE  
fifth floor  
flour mill building  
1000 potomac street nw  
washington, d.c. 20007-3501  
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OTHER OFFICES  
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new york, new york  
portland, oregon  
seattle, washington  
GSBLAW.COM

Please reply to JOHN WELLS KING  
jking@gsblaw.com TEL EXT 2520

September 13, 2006

ORIGINAL

RECEIVED - FCC

VIA HAND DELIVERY

SEP 13 2006

Anthony Dale  
Managing Director  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Federal Communication Commission  
Bureau / Office

RE: **Nebraska Rural Radio Association**  
AM Station KNEB Facility ID 51463  
FM Station KNEB-FM Facility ID 51462  
At Scottsbluff, Nebraska  
AM Station KTIC Facility ID 33880  
FM Station KWPN-FM Facility ID 33881  
At West Point, Nebraska

SUBJECT: ANNUAL REGULATORY FEE EXEMPTION

ATTENTION: Roland Helvajian  
Room No. 1-C848

Dear Mr. Dale:

On behalf of Nebraska Rural Radio Association ("NRRA") this letter is written to request that the Commission recognize and extend to the above-referenced broadcast stations the annual regulatory fee exemption it has granted NRRA's Stations KRVN, Facility ID 48002, and KRVN-FM, Facility ID 48001, at Lexington, Nebraska.

NRRA is a membership organization owned by nearly 4,200 Nebraska farmers and ranchers. NRRA commenced operation more than 50 years ago, as "an agricultural organization, organized and operated exclusively for educational purposes and for the promotion of social and economic welfare in rural areas." NRRA is in the nature of a cooperative. It does not have stock. Each member has only one vote regardless of the number of membership certificates held. NRRA's net income may not be distributed to its membership, but must be used for the betterment of the radio facilities and programming, then to the field of agricultural education, rural youth, and then to the agricultural college and agricultural research at the University of Nebraska.



GARVEY SCHUBERT BARER

Anthony Dale  
Managing Director  
September 13, 2006  
Page 2

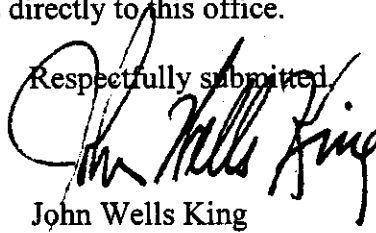
The Commission has determined that KRVN and KRVN-FM are exempt from payment of the annual regulatory fee because NRRA is a non-profit association.

In a corporate reorganization in 2005, NRRA acquired the licenses of KNEB, KNEB-FM, KTIC, and KWPN-FM from subsidiary entities to which the stations were formerly licensed.

Accordingly, since KNEB, KNEB-FM, KTIC, and KWPN-FM operate on the same basis as KRVN and KRVN-FM, as part of a not-for-profit enterprise, it is respectfully requested that they be granted an exemption from the filing of annual regulatory fees.

Kindly communicate any questions directly to this office.

Respectfully submitted,



John Wells King

cc: Roland Helvajian (by email/pdf)

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 1 2007

OFFICE OF  
MANAGING DIRECTOR

Mr. Mark Dietz  
Ozark Communications, Inc.  
Post Office Box 1086  
Ozark, Arkansas 72949

Re: KDYN-FM, Ozark, Arkansas  
Request for Waiver of FY 2006  
Regulatory Late Fee  
Fee Control No. 0609228835164009

Dear Mr. Dietz:

This responds to your April 9, 2007 inquiry disputing assessment of the penalty for late payment of the fiscal year (FY) 2006 regulatory fee for KDYN-FM (KDYN), Ozark, Arkansas. Our records reflect that the FY 2006 regulatory fee penalty in the amount of \$265.00 has not been paid. For the reasons set forth below, your request is denied.

In your inquiry, you state that you mailed KDYN's FY 2006 regulatory fee on September 18, 2007, one day before the deadline of September 19, 2007.<sup>1</sup> You also state that you were informed by "a receptionist" that no penalty would be assessed so long as the regulatory fee payment was mailed before the due date.<sup>2</sup> Further, you state that you never received any notification of a penalty from the Commission until April 9, 2007.<sup>3</sup>

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. § 159(c)(1). It is the obligation of the licensee responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.<sup>4</sup> Your request does not indicate or substantiate that you met this obligation. Nor does the statute permit the Commission to remove this obligation even under circumstances, such as those you recite, where you may have received information that was confusing or inconsistent with the Commission's published

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<sup>1</sup> Inquiry from Marc Dietz to ARINQUIRIES, FCC (April 9, 2007) (electronic mail).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See 47 C.F.R. § 1.1164; *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8107-08 ¶ 52 (2006).

Mr. Mark Dietz

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rules.<sup>5</sup> Further, although you may not have been aware of or fully understood the Communications Act or the Commission's rules regarding regulatory fees, Commission licensees are expected to know and understand the requirements and rules governing their licenses.<sup>6</sup> Therefore, your request is denied.

As to your claim that you did not receive notification of the penalty until April 2007, our records indicate that Bill No. 0620000204 was generated on September 25, 2006 for KDYN's penalty of \$265.00. In any event, as stated above, it is the licensee's obligation to familiarize itself with the Commission's regulatory fee requirements and to make timely payment.

Payment of the \$265.00 penalty for late payment of the FY 2006 regulatory fee is now due. The penalty should be submitted, together with a copy of Bill number 0620000204 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>5</sup> Any information to the contrary provided by informal staff contacts cannot serve as a basis for the Commission to waive the late payment penalty that is made obligatory by federal law. We point out that section 1.1158 of the Commission's rules permits payment of regulatory fees by means other than mailing, such as electronic transfer.

<sup>6</sup> Among other things, the Commission issued Public Notices announcing the due date for payment of fees. *Public Notice*, July 31, 2006; *Public Notice*, DA 06-1661, August 21, 2006. The Commission also informs licensees of due dates and other pertinent payment information on its website. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8101, ¶ 28 (2006).

**Sherry Elkheshin**

8437

**From:** Marc Dietz / KDYN [kdyn@centurytel.net]  
**Sent:** Monday, April 09, 2007 2:36 PM  
**To:** ARINQUIRIES  
**Subject:** RE:0001723626 - late penalty for regulatory fee's

0609228835/64000

To Whom It May Concern,

I received a notice of withholding of action today (4/9/07) because of bill number 0620000204, which I later learned was a late fee for a regulatory fee that was received one day late. The fee was received on 9/20/06 and mailed on 9/18/06. It was my understanding in talking with a receptionist that if it was mailed before the due date there would not be a late fee. I also have never received anything notifying me that there was a penalty owed until today when I received the notice of withholding. Could you please contact me at 479-667-4567 or respond by email at [kdyn@centurytel.net](mailto:kdyn@centurytel.net). I would like the powers that be to consider waiving this penalty since the payment was mailed before the due date.

Thank you for your consideration,

Marc Dietz  
KDYN, Ozark, AR.

Fy 06 reg fee Payment was 9/20/06  
Penalty for late Payment outstanding  
\$ 265.00  
Adama

479-970-4567

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 30 2007

FILE

OFFICE OF  
MANAGING DIRECTOR

Howard A. Topel, Esq.  
John D. Poutasse, Esq.  
Jean W. Benz, Esq.  
Leventhal Senter & Lerman PLLC  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

Re: Reading Broadcasting, Inc.  
Stations WTVE and WTVE-DT,  
Reading, PA  
FY 2005 Regulatory Fee  
Fee Control No. RROG-06-00007715

Dear Counsel:

This is in response to your request dated August 21, 2006 (*Recon. Request*), filed on behalf of Reading Broadcasting, Inc. (RBI or the Company), licensee of commercial television station WTVE(TV) and digital television station WTVE-DT, Reading, Pennsylvania, that the Office of Managing Director (OMD) reconsider its decision denying RBI a waiver of the \$20,025.00 regulatory fees for Fiscal Year (FY) 2005, on the basis of financial hardship.<sup>1</sup> Our records reflect that you have not paid the regulatory fees at issue here. For the reasons stated herein, we deny your request.

In RBIs' initial waiver request (*Request*), it asserted that RBI "has suffered severe losses" and "is beset with substantial debt arising from civil litigation as well as a decade-long comparative renewal proceeding, which only ended several months ago."<sup>2</sup> In support, RBI submitted a document entitled "Reading Broadcasting, Inc.: Statement of Income, Year Ended December 31, 2004" (*Statement of Income*). RBI stated that in 2004, "no shareholder owning more than one percent of the Company was compensated in exchange for services."<sup>3</sup> It recited that "[t]he president and general manager, whose stock ownership in the company is only about one percent, was paid . . . for his full-time work in 2004."<sup>4</sup> In a subsequent communication, counsel for RBI stated that RBI filed a voluntary petition for Chapter 11 bankruptcy reorganization in the United States Bankruptcy Court for the Eastern District of Pennsylvania on October 7, 2005.<sup>5</sup>

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<sup>1</sup> See Letter from Mark Stephens (Stephens), Acting Chief Financial Officer (CFO), OMD, to Micheal L. Parker, Sr. (dated July 20, 2006) (*RBI Letter*).

<sup>2</sup> *Request* at 5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Email from John D. Poutasse, Esq., to Judith Halev (Feb. 13, 2006)

In the *RBI Letter*, OMD denied RBI's waiver request. OMD explained that in establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship".<sup>6</sup> In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees. The *RBI Letter* also noted that the Commission has determined that it will waive regulatory fees for licensees who are bankrupt or are in receivership at the time the fees are due.<sup>7</sup>

In the *RBI Letter*, with respect to your request for regulatory fee relief on the grounds of financial hardship, our review of the record, including RBI's *Statement of Income*, indicated that the financial loss that RBI suffered in calendar year 2004 was fully offset by amortization and depreciation deductions and by the salary paid to RBI's president and general manager, which the Commission considers as funds available to pay the fees.<sup>8</sup> We therefore found that RBI failed to establish that it lacked sufficient funds to pay the FY 2005 regulatory fees, and we denied RBI's waiver request on this basis. We also denied RBI's request for regulatory fee relief based on bankruptcy because the FY 2005 regulatory fees at issue here were due on September 7, 2005, and RBI did not file for bankruptcy until October 7, 2005.

In your request for reconsideration of the *RBI Letter*, you contend that OMD's "requirement that a licensee forgo continued payment of salaries in favor of regulatory fees subjects such a licensee to a higher burden than it would have while in bankruptcy, . . . [which permits] continued payment of salaries."<sup>9</sup> You assert that "[a] requirement . . . that a licensee's officer's and management should forgo payment of their salaries"<sup>10</sup> so as to justify a regulatory fee waiver "would surely 'affect a regulatee's ability to serve the public,' as few employees and executives have the financial wherewithal to continue to serve a licensee without compensation for their labors."<sup>11</sup> Your claim that there is no

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<sup>6</sup> See *Implementation of Section 9 of the Communications Act*, MO Docket No. 94-19, Report and Order, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

<sup>7</sup> See *Implementation of Section 9 of the Communications Act*, MO Docket 94-19, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12762, #14 (1995).

<sup>8</sup> *RBI Letter* at 2 ("RBI had money from deductions for amortization and depreciation and compensation to a corporate officer from which it could pay the regulatory fees.")

<sup>9</sup> *Recon. Request* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

“directive that a regulated entity would not qualify for waiver if any salary was paid that would offset the debt of the company in part.”<sup>12</sup>

It is pursuant to established precedent that we consider compensation paid to principals and officers in reviewing requests for waiver of the regulatory fees based on financial hardship.<sup>13</sup> We believe that consideration of such compensation reflects the appropriate balance between the Commission’s interest in receiving from its licensees the statutorily-mandated regulatory fees that cover the costs of certain of its regulatory activities and the Commission’s willingness to grant a waiver in extraordinary and compelling circumstances “only when the impact of the regulatory fee will affect a regulatee’s ability to serve the public.”<sup>14</sup> More specifically, the Commission’s implementation order establishing a regulatory fee program authorized the staff in assessing claims of financial hardship to require regulatees to provide “a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.”<sup>15</sup> This language supports our conclusion that such information may be taken into account and used in ascertaining the ability of the entity to pay its fees.

Moreover, contrary to your assertion, we did not hold that RBI was required to forego paying salaries to its officers to support a waiver of the regulatory fees on the grounds of financial hardship. Issues regarding whether to compensate principals and officers and the amount of any such compensation are business decisions within the licensee’s discretion. Rather, we simply found that the ability to pay salaries indicated that these funds were available from which to pay the fees. We therefore deny your request for reconsideration based on financial hardship.

You also assert that “the Commission’s 1995 decision establishing evidence of bankruptcy as sufficient to establish financial hardship warranting a waiver of regulatory fees made no statement regarding the timing of such a filing.”<sup>16</sup> You maintain that “filing for bankruptcy removes any need to weigh a factual showing regarding financial hardship, as it provides unequivocal evidence of critical economic distress.”<sup>17</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.*, Letter to Richard A. Helmick, Esq. (July 26, 2006); Letter to Paul H. Brown, Esq. (May 23, 2005), Letter to Robert Lewis Thompson, Esq. (Jan. 12, 2005), Letter to George A. Mattmiller, Jr. (the then-Acting President of Reading Broadcasting, Inc.) (Jan. 4, 2005), Letter to Jerry DeCiccio (Dec. 20, 2004), Letter to Robert Lewis Thompson, Esq. (Dec. 1, 2004), and Letter to Aaron P. Shainis, Esq. (Sept. 1, 2004).

<sup>14</sup> *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd at 12762, #14.

<sup>15</sup> *See id.*

<sup>16</sup> *Recon. Request* at 2.

<sup>17</sup> *Id.*; *see also id.* at 2-3 (“[o]nce . . . [OMD] became aware of the bankruptcy filing, which occurred well before it rendered its finding in the . . . [RBI Letter], it should no longer have conducted an inquiry into the finances of RBI”).